

expungement of the court conviction in the nature of granting of clemency or other relief after the conviction has become final, without regard to whether punishment was imposed.

Subpart I—Reopening of Hearings

§ 5.601 Petition to reopen hearing.

(a) A respondent may petition to reopen the hearing on the basis of newly discovered evidence or on the basis of being unable to present evidence due to the respondent's inability to appear at the hearing through no fault of the respondent and due to circumstances beyond the respondent's control.

(b) The filing of a petition does not stay an existing order of the Administrative Law Judge. However, if filed within 30 days after the effective date of the Administrative Law Judge's decision, it will toll or defer the running of the 30-day statutory period of appeal as provided in subpart J of this part until the Administrative Law Judge has acted on the petition.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985; 50 FR 35228, Aug. 30, 1985]

§ 5.603 Procedures for submitting petition.

(a) The procedures for submitting a petition based on newly discovered evidence are as follows:

(1) A petition to reopen the hearing may be submitted at any time prior to a final decision on appeal or within one year of the effective date of the Administrative Law Judge's decision.

(2) If an appeal to the Commandant from the Administrative Law Judge's decision has not been filed, the petition must be addressed to the Administrative Law Judge. If an appeal to the Commandant has been filed, the petition must be submitted to the Commandant.

(3) The petition must be in letter form, typewritten or written legibly, and shall contain:

(i) The name of the petitioner, the number and description of the license, certificate and/or document involved, nature of the charge, the decision rendered including the order, and the name of the Administrative Law Judge who heard the case;

(ii) A statement setting forth a description of the newly discovered evidence; and

(iii) A statement as to whether or not this additional evidence was known to the petitioner at the time of the hearing, and reasons why the petitioner, with due diligence, could not have discovered such new evidence prior to the completion of the hearing.

(b) The procedures for submitting a petition on the basis of inability to appear at the hearing are as follows:

(1) A petition to reopen the hearing may be submitted within 30 days of the effective date of the Administrative Law Judge's decision.

(2) If an appeal to the Commandant from the Administrative Law Judge's decision has not been filed, the petition must be addressed to the Administrative Law Judge. If an appeal to the Commandant has been filed, the petition must be submitted to the Commandant.

(3) The petition must be in letter form, typewritten or written legibly, and shall contain:

(i) The name of the petitioner, the number and description of the license, certificate and/or document involved, nature of the charge, the decision rendered including the order, and the name of the Administrative Law Judge who heard the case;

(ii) A statement setting forth a description of the evidence the petitioner would have offered at the hearing; and

(iii) A statement as to why the petitioner was unable to appear at the hearing including why the petitioner did not seek a change in the time or place for opening of the hearing.

§ 5.605 Action on petition.

(a) The Administrative Law Judge, or Commandant, as appropriate, forwards a copy of the petition to the investigating officer. The investigating officer is afforded a reasonable time within which to submit written comments as to the merits of the petition.

(b) The Administrative Law Judge, or the Commandant, renders a decision either granting or denying the petition. The decision on the petition will be based on a consideration of the petition, the record of the hearing, and the